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,	UNITED STATES DISTRICT COURT
	DISTRICT OF NEVADA
	DENNIS MONTGOMERY, et al., 3:06-CV-0056-PMP (VPC)
	Plaintiffs, ) ORDER
	vs.
	ETREPPID TECHNOLOGIES, LLC., et al.,
	Defendants.
	Before the court is plaintiffs, Dennis Montgomery and the Montgomery Family Trust
	("Montgomery parties") amended motion for orders (1) sealing and striking certain docket items (#s566
	568 and 571). Counterdefendant Michael Sandoval filed a joinder to the Montgomery parties' motion
	(#574). Carla Dimare, former counsel for the Montgomery parties, opposed (#610), as did forme
	counsel, Michael Flynn (#s 613 & 620-625). eTreppid Tchnologies, LLC and Warren Trepp
	("eTreppid") joined in opposition (#614), and the Montgomery parties replied (#649).
	I. Procedural Background
	Michael Flynn, former counsel to the Montgomery parties, filed two motions and accompanying
	declarations and exhibits which are the subject of this dispute. By his motion to establish procedures
	to comply with Nevada Rules of Professional Conduct 3.3(a)(3) and (b), Mr. Flynn alleges that the
	Montgomery parties and their current counsel have engaged in litigation misconduct which may be
	governed by the disclosure requirements of Rule 3.3 of the Nevada Rules of Professional Conduc
	(#540). Mr. Flynn filed a companion motion for sanctions against the Montgomery parties and their

<sup>&</sup>lt;sup>1</sup>The court grants the Montgomery parties' request for judicial notice (#567).

current counsel pursuant to 28 U.S.C. § 1927, and/or the court's inherent power, and/or Local Rule IA 4-1 (#545). This motion is supported by Mr. Flynn's declaration with exhibits, a timeline, and papers on file in this case, and the search warrant proceeding, case number 3:06-CV-00263.

The Montgomery parties seek an order to seal and strike these motions and supporting papers on the grounds that the motions are brought to compromise the Montgomery parties' ability to defend claims alleged against them by eTreppid and to prosecute their own claims. They further contend that the filings improperly use and reveal information Mr. Flynn gained during his representation of the Montgomery parties in violation of Rule 1.9 of the Nevada Rules of Professional Conduct.

## II. Discussion

In *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9<sup>th</sup> Cir. 2006), the court considered circumstances under which a party may seek to seal judicial records. The court acknowledged that "[u]nless a particular court record is one 'traditionally kept secret,' [such as grand jury transcripts and pre-indictment warrant materials], a 'strong presumption in favor of access' is the starting point." *Id.* at 1178 (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9<sup>th</sup> Cir. 1995)). The party asking to seal a judicial record bears the burden of overcoming this strong presumption. *Id.* However, the court noted that in prior decisions, it had made a distinction between documents attached to a non-dispositive motion and had concluded that because the public has less of a need to access such records, the "good cause" standard under Fed.R.Civ.P. 26(c) will "suffice [] to warrant preserving the secrecy of sealed discovery materials attached to non-dispositive motions." *Id.* at 1180, (quoting *Foltz v. State Farm Auto. Insurance Company*, 331 F.3d 1122, 1135(9th Cir. 2003)). The court finds that the disputed motions – Mr. Flynn's motion to establish procedures and his motion for sanctions – are non-dispositive motions and, therefore, subject to the "good cause" showing under Rule 26(c).

The court has reviewed the disputed papers and finds that good cause exists to seal the motions and accompanying documents filed by Mr. Flynn. However, the court will not strike the documents at this time.

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## III. Conclusion

IT IS THEREFORE ORDERED that the Montgomery parties' motion to seal and strike Mr. Flynn's motions (#566) is **GRANTED IN PART AND DENIED IN PART** as follows:

- 1. The Clerk of Court will seal docket numbers 540, 545, 546, 547, 548, 550, 551, 552, 553, 554, 555, 556, 557, 566, 567, 568, 571, 574, 585, 587, 588, 589, 593, 595, 596, 597, 598, 599, 600, 601, 602, 603, 605, 610, 613, 614, 620, 621, 622, 623, 624, 625, 632, 633, 635, 637, 638, 649, 661, 680, 698, and 714, and shall restrict access to these documents to the court only pending further order of this court;
- 2. In the event Mr. Flynn, Ms. Dimare, or counsel for the Montgomery parties do not have hard copies of these documents, they may seek leave of court to obtain copies;
- 3. Counsel for the remaining parties to this action may retain their copies of these documents, but shall henceforth treat these documents as "attorney's eyes only," and;
- 4. While the subject motions are under submission to this court, no other party to this action or their counsel shall use any information contained in the sealed papers in any proceedings pending before this court, or for any other purpose.

IT IS FURTHER ORDERED that the Montgomery parties' request for sealing of documents filed in support of the Montgomery parties' amended notice of motion and motion for orders re: filing by Michael Flynn (#571) is **GRANTED**, and that the same protocol as is set out more fully above shall apply.

IT IS SO ORDERED.

DATED: July 11, 2008.

UNITED STATES MAGISTRATE JUDGE

Valerie P. (boke